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In The

Supreme Court of the United States

October Term, 1969

No. 333

NICHOLAS PANACCIONE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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RULES CITED:

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Nicholas Panaccione, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on June 16, 1969 which judgment affirmed a judgment of conviction and sentence of the United States District Court for the District of New Jersey filed on June 21, 1968.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals printed in Appendix B hereto, infra, has not as yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 16, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. Did not the District Court commit grave and reversible error, under the Amended Federal Rules of Criminal Procedure, in summarily denying all of petitioner's twenty-four requests for a bill of particulars and all six requests for discovery and inspection made in pretrial motions, and does not such a decision below in the Court of Appeals affirming such action by the District Court wreak havoc upon pretrial discovery as contemplated by this Court under the new rules?

2. Should not petitioner's conviction have been reversed upon the basis of an improper "Allen" charge directing a juror to distrust his own judgment if he finds a large majority of the jurors taking a different view, especially in light of the holding by the Court of Appeals that such a charge would hereafter be prohibited in the Third Circuit, and would also hereafter normally constitute reversible error?

STATUTES INVOLVED

The statutory provisions involved are 18 U.S.C.

Sections 2, 472 and 473. They are printed in Appendix A, infra.

STATEMENT

Petitioner was charged in three counts of a six count indictment with trafficking in counterfeit money (6a-8a).* He was acquitted on one count and convicted on the other two, with an aggregate sentence being imposed of five years incarceration (247a).

In June of 1965, an undercover agent of the Secret Service, James D'Amelio, met one of petitioner's co-defendants, named Pepe (49a). The agent was advised of access to an unlimited amount of counterfeit, and further advised that any transactions would have to take place in Trenton, New Jersey (49a, 51a). Acting on instructions from Pepe, the agent went to Trenton on July 6, 1965 where he met petitioner's other co-defendant Fioravanti in a bar (51a-52a). Shortly thereafter petitioner entered the bar and was told by Fioravanti that the Secret Service agent was there to purchase counterfeit money (53a). Petitioner reached into his pocket, took out a key, and handed it to Fioravanti, who in turn gave it to the agent, with instructions to go outside to a locker, open it with the key, examine the money and if satisfied, return and make payment therefor (53a). The agent followed the instructions, and being satisfied that the locker contained counterfeit money, gave a prearranged signal to other agents of the Secret Service who were covering the area (53a). Petitioner, co-defendant Fioravanti and the undercover agent were arrested, taken to the Federal Building and placed in a detention room (56a).

* "a" refers to the record abstract printed as appellant's appendix in the United States Court of Appeals for the Third Circuit which appendix has been certified and filed with this petition as a part of the official record below.